

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Joint Application for
Approval of an Interconnection and Resale
Agreement Between Prism Minnesota
Operations, LLC and US WEST
Communications, Inc. Under the Federal
Telecommunications Act of 1996

ISSUE DATE: February 24, 2000

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ORDER REJECTING INTERCONNECTION
AGREEMENT, REQUIRING REVISED
FILING, AND ESTABLISHING
EXPEDITED APPROVAL PROCESS

PROCEDURAL HISTORY

On December 21, 1999, Prism Minnesota Operations, LLC (Prism) and US WEST Communications, Inc. (USWC) filed for Commission approval of an Interconnection Agreement in accordance with the Federal Telecommunications Act of 1996.

On January 12, 2000, the Minnesota Department of Commerce (the Department) filed comments recommending that the Commission accept the proposed agreement.

The Commission met on February 15, 2000 to consider this matter.

FINDINGS AND CONCLUSIONS

I. THE USWC/PRISM INTERCONNECTION AGREEMENT

USWC and Prism (the Parties) submitted their Interconnection Agreement pursuant to the terms of the Stipulation entered into between USWC and the Commission on February 4, 1999. In accord with this Stipulation, USWC has incorporated language that historically has been required to be included in its agreements by the Commission but has also reserved its right to challenge Commission required language that is identified in its filing for approval.

The Parties' Interconnection Agreement contains terms and conditions for interconnection and resale. The Agreement covers the interchange of traffic, collocation, unbundled network elements and ancillary services. The Agreement also contains various provisions covering billing, default, dispute resolution, notices, amendments, assignments and other general provisions. The Agreement states that it is effective as of the date approved by the Commission and is in effect until February 24, 2001 and will continue until a new agreement becomes effective or is terminated by the parties. The Parties stated that the Agreement does not discriminate against any other telecommunications carrier and it is consistent with the public interest.

II. THE DEPARTMENT'S COMMENTS

The Department reviewed the Agreement and stated that it complied with precedents set by the Commission. The Department also noted that Prism has not yet received authority to provide local service and that such authority is necessary before providing service under the Agreement.

III. THE COMMISSION'S ANALYSIS

The Federal Telecommunications Act of 1996 (the Act) permits telecommunications companies to negotiate an interconnection agreement with an incumbent local exchange carrier (ILEC) to interconnect with and use the incumbent's network for the purpose of providing competitive local exchange service. The Act specifies the Commission's role with respect to a negotiated agreement for the resale of local exchange service. The relevant portion of Section 252(e) states:

(e) Approval by State Commission.--

(1) Approval Required.--Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for Rejection.--The State commission may only reject--

(A) an agreement (or any portion thereof) adopted by **negotiation** under subsection (a) if it finds that--

(i) an agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity....

The Commission has reviewed the proposed agreement and finds that, for the most part, it is acceptable. However, two paragraphs of the Parties' Agreement warrant examination in light of

the FCC's revised rules, issued November 5, 1999.

Specifically, the first sentence of Section (E), Paragraph 1.9.4 incorrectly states that "...once the Eighth Circuit's mandate is issued, there will be no FCC rule identifying any specific unbundling requirements." This sentence is not accurate. FCC Rule 51.319, adopted the FCC's revised rules issued November 5, 1999 and entitled "Specific unbundling requirements", specifies which network elements an ILEC must provide to a requesting telecommunications carrier on an unbundled basis. In addition, FCC Rule 51.315 addresses ILEC responsibilities regarding the combination of unbundled network elements. These rules have not been stayed or vacated.

The misstatement of the legal status of FCC rules regarding ILEC network element obligations in Paragraph 1.9.4 is not consistent with the public interest, convenience, and necessity and must be deleted from the interconnection agreement.

Second, while parties to a negotiated interconnection agreement are free to agree to provisions contrary to the FCC rule requirements, it is not clear in light of the misstatement of law in paragraph 1.9.4 that the parties have negotiated the following sentences on a proper understanding of the currently applicable law.

Second sentence in paragraph 1.9.4: "USW shall have no obligation to combine or not to separate any network elements, whether or not they are ordinarily combined in USW's network ."

Paragraph 1.9.3: "USW shall have no obligation under this Agreement as amended... (4) to combine or perform the functions necessary to combine any network elements, whether or not they are ordinarily combined in USW's network."

IV. COMMISSION ACTION

Based on this analysis, the Commission will reject the Parties' Interconnection Agreement as submitted and direct them to reconsider the identified paragraphs in light of the existing law. The Commission will adopt a procedure (specified below in the Ordering Paragraphs) for expediting approval of the Parties' revised agreement that conforms to the Commission's decision herein.

ORDER

1. The Interconnection Agreement submitted by Prism Minnesota Operations, LLC (Prism) and US WEST Communications, Inc. (USWC) on December 21, 1999 is rejected.
2. Prism and USWC shall refile their Interconnection Agreement, modified consistent with this Order, within two weeks of this Order.
3. To expedite approval of the refiled Interconnection Agreement, the Commission hereby delegates authority to the Executive Secretary to 1) examine the revisions filed by the Parties, 2) confirm that the deficiencies have been corrected as recommended, and 3) issue a letter to the Parties approving the revised Agreement as of the date of filing.
4. If the Parties do not reach an agreement that addresses the Commission's findings of deficiencies, they shall inform the Commission of that within two weeks of the Commission's Order.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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